

Immigration and Asylum Bill Briefing

Second Reading, House of Commons

10 July 2026

Introduction

1. JUSTICE is a law reform and human rights organisation working to create a fair justice system within everyone's reach.
2. This briefing addresses the Immigration and Asylum Bill (the "**Bill**") in advance of Second Reading in the House of Commons on 13 July 2026. In this briefing, we set out our opposition to the abolition of the independent immigration tribunal, analyse the Article 8 immigration changes for their compatibility with the ECHR and highlight further backsliding on the UK's approach to modern slavery/ human trafficking.

Abolishing the First tier Tribunal's oversight of immigration decisions

3. Part 1 of the Bill replaces the First tier Tribunal (Immigration and Asylum Chamber) ('the **Tribunal**') with a new immigration appeals body ('**IIAA**'), which instead of being made up of independent judges will be controlled significantly by the Home Office. This will reduce legal accountability of Home Office decision-making and not solve the appeal backlog.

The importance of the independent judiciary

4. Courts and tribunals, overseen by independent judges, are core to the rule of law as they ensure that the executive (in this instance, the Home Office) acts within the laws set by Parliament. As the Supreme Court said in *UNISON*, courts (and tribunals) do not '*merely perform a public service like any other*', they

*'exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. **That role includes ensuring that the executive branch of government carries out its functions in accordance with the law.**'*
(emphasis added)¹.
5. Reducing the role of the courts in overseeing immigration decisions would put Home Office decisions above full legal accountability in cases where children can be separated from their parents and vulnerable people face being returned to torture or death. Whilst there will be a right to appeal to the Upper Tribunal, this will only be on points of law and will require permission.

¹ *UNISON v Lord Chancellor* [2017] UKSC 51, para 68

6. It will also set a dangerous precedent. Would we want the government making decisions on our taxes or detention under the Mental Health Act without the right to challenge that decision before an independent judge? Would we be reassured if a new body was being set up, without independent expert judges, but whose members were appointed by HMRC or the medical clinician involved who could also direct the case to be heard quickly?

The IIAA's lack of independence

7. Despite its name, our concerns have not been allayed about the independence of this new body. At present, Tribunal judges are appointed by the independent Judicial Appointments Commission, must have a legal qualification and at least five years' experience of practising law.² Their independence is protected by the Constitutional Reform Act 2005.³ Tribunal rules are set by the Tribunal Procedure Committee, which includes the Senior President of the Tribunal and members appointed by the judiciary and Lord Chancellor.⁴
8. The proposed IIAA would have *nowhere near* the same level of independence as the Home Office would have significant control over its structure and the adjudicators themselves. This is especially problematic when the Home Office will be parties to these cases, whilst recruiting and paying the people who will decide them:
 - a. The Chair and Professional Standards Officer are to be appointed by the Home Office (clause 2(2));
 - b. The first Chief Executive and Chief Appeals Officer of the body are to be appointed by the Home Office (clause 2(3)), thereafter by the Chair (who themselves are appointed by the Home Office). The Chief Executive will appoint IIAA adjudicators and oversees training;
 - c. The IIAA Procedure Rules Board, which sets the rules for the new body, consists of the Chief Executive, the Chief Appeals Officer, the Professional Standards Officer and any appointees by the Chair (clause 5). This means that the IIAA Procedure Rules Board will be completely made up of Home Office appointees, or those chosen by direct Home Office appointees.
 - d. The Home Secretary has a wide, regulatory power to set out time periods for when the IIAA *must* decide bail applications, or '*take any other steps in proceedings*' (clause 8(1)). This includes specifying how long an extension may be granted as is necessary 'in the interests of justice' (clause 8(2)) The Home Secretary will be a party to these proceedings, but yet can decide what the rules are.
 - e. The Home Secretary may make an expedition request '*in the public interest*' which, whilst the IIAA adjudicator will be permitted to refuse, there will be considerable

² Or 'have experience in law which makes the person as suitable for appointment' as if they had that experience. Schedule 2, Tribunals, Court and Enforcement Act 2007

³ Section 3, Constitutional Reform Act 2005.

⁴ Schedule 5, Tribunals, Court and Enforcement Act 2007

pressure on them not to do so (clause 9). This is concerning as the IIAA must only '*aim to be accessible, fair and independent*' (emphasis added) but is required to '*have regard to the public interest, and in particular the fact that the IIAA operates as a key part of the immigration system*' (clause 1(5));

- f. The Home Secretary has a considerable 'Henry VIII' power to make regulations which would amend, repeal or revoke primary legislation to make clear that, in relation to a particular law, the IIAA is not to be treated as an independent Tribunal. This power is clearly designed to reduce the IIAA's accountability and independence;
9. No government department should be looking to reduce independent accountability, but it is of particular concern that the Home Office is seeking to do so. It has only been a few years since the Windrush Lessons Learned Review found that, within the Home Office, there was a '*risk of cases being processed without adequate quality control and safeguards*' and that there was a '*"target dominated" work environment and low-quality decision-making*'.⁵ The UNHCR's recent audit of asylum interviews in the UK found that, in nearly half of cases reviewed, the interview ended without the asylum seeker's credibility being '*adequately explored or addressed*'.⁶ Around 40% of asylum appeals are granted at the Tribunal.⁷
10. Tribunal judiciary play an important role in holding the Home Office accountable; the new IIAA risks the Home Office "playing with a loaded deck", where it controls who will make the decision and what the rules of the appeal are. It cannot be said to be a fair or independent process.

The importance of legal expertise

11. Immigration law is one of the most legally complex areas of domestic law. The Law Commission has previously said, whilst recommending simplification, that the cost of complexity is '*mistakes, slower decision-making and costlier administration, and an increased number of administrative reviews, appeals and judicial reviews*'.⁸
12. The proposed new adjudicators (apart from the senior adjudicators) will not be required to have any knowledge of immigration law or legal background. Despite this, they will be required to make decisions on issues as fundamental as whether an asylum-seeker faces torture/ death on return to their home country, whether a child should be forced to leave the UK to a country they have never been before or whether an individual's liberty should be curtailed in immigration detention. No information is provided that they will be required to sit with legally qualified adjudicators.
13. Extensive training will be required and is unlikely to be sufficient; when Home Office asylum decision-makers were given 22 weeks training, the ICIBI heard that it was '*inadequate*' and

⁵ Wendy Williams, '[Windrush Lessons Learned Review](#)' (March 2020), p13

⁶ UNHCR, '[Asylum Interviews in the UK: Audit Findings and Recommendations](#)' (March 2026)

⁷ Free Movement, '[Asylum appeal backlog rises to 87,450 cases](#)' (11 June 2026)

⁸ Law Commission, '[Simplification of the Immigration Rules: Report](#)' (13 January 2020)

did 'not provide them with the necessary information to perform their job effectively'.⁹ Not only will they have to get up to speed with complex immigration and human rights law, but they will have to be able to approach traumatic evidence in a sensitive manner, handle vulnerable witnesses, give proper weight to expert evidence and conduct hearings with interpreters. A perversity is that immigration advisors must demonstrate their competence by passing an assessment¹⁰, but, under the new system, the appeal adjudicators who will make decisions will not have to demonstrate knowledge of immigration law.

14. Whilst it is true to say there were adjudicators prior to the establishment of the Tribunal who were not required to be legally qualified, this is not the full picture. They were usually barristers or solicitors of several years' standing. The House of Commons Library highlights how the decision in 2000 to ensure all adjudicators were legally qualified '*reflects the fact that all adjudicators appointed since 1987 had such qualifications, despite not formally requiring them*'.¹¹ Whilst lay members have been permitted in the Tribunal previously, they were not regularly used and sat with legally qualified members.¹²
15. We would also note, given the comparison that has been made, that magistrates sit with specialist legal advisors when hearing criminal cases. This is a key difference to what is proposed here. There is also at present an automatic right of appeal to the Crown Court.¹³

The IIAA will make the appeal backlog worse, not better

16. We share the Government's urgency to address the appeal backlog. However, the IIAA will likely exacerbate, rather than solve, the situation. We note that even the Home Office impact assessment has not been able to estimate the costs of setting up the IIAA or quantify the benefits of this policy.¹⁴
17. Replacing 350 experienced immigration judges will not make the system more efficient, but likely have the opposite effect. It will take significant time to properly train the new adjudicators and there will likely be a significant transition period before the IIAA is operating at full capacity. This is anticipated by the Home Office, which provides for a period where the Tribunal will operate alongside the IIAA (clause 15).
18. When Australia recruited immigration adjudicators without legal qualifications, it was '*widely acknowledged*' this led to significant delays in appeals and an increase of asylum appeal backlogs. Australia have recently reverted back to a system of adjudicators having to be

⁹ Independent Chief Inspector of Borders and Immigration, '[An inspection of asylum casework](#)' (June – October 2023) p34 and 35

¹⁰ GOV.UK, '[How to become a regulated immigration advisor](#)' (4 September 2025)

¹¹ House of Commons Library, '[History of asylum appeals in the United Kingdom](#)' (6 February 2026)

¹² Hansard, '[Tribunals: immigration](#)' (30 October 2007)

¹³ We note that the Courts and Tribunals Bill would change this, but the proposed test threshold would be lower than the 'reasonable chance of success' required for permission at the Upper Tribunal in an appeal.

¹⁴ Immigration and Asylum Bill [Impact Assessment](#), p7 – 12

legal practitioners of at least five years (or have five years of equivalent expertise).¹⁵ In Denmark, cited by the Home Office as a key influence for these reforms, an independent judge always sits as part of the panel or alone in accelerated cases.¹⁶

19. It is welcome that there will be full appeal rights on points of law to the Upper Tribunal, which we called for in our consultation response. Employing hundreds of inexperienced adjudicators to conduct complicated legal hearings, with vulnerable applicants, risks causing a significant backlog at the Upper Tribunal stage. Expert Tribunal judges are more likely to get appeals right first time, reducing the number of unnecessarily re-heard appeals after an Upper Tribunal finds an error of law.
20. Despite this, we are also still concerned that many without legal advice will struggle to access a more complex, legalistic appeal stage. We note there is barely anything in this Bill about early legal advice – despite the Home Office saying it was an important focus in the consultation. 2024 research by the Law Society found that 63% of the population did not have access to an immigration/ asylum legal aid provider in their area.¹⁷ ILPA have previously estimated only 43% of asylum seekers had access to legal aid representation.¹⁸
21. The backlog will only be solved by improving Home Office initial decision-making. The current grant rate for immigration appeals is 39%, but 26% of appeals are withdrawn (the majority of which are likely due to the Home Office agreeing to reconsider their decision).¹⁹ In 2023/24, only 52% of asylum decisions sampled by the Home Office met their internal quality assurance process.²⁰ Whilst the Tribunal could be more efficient, especially with the use of technology, this should be done in conjunction with HMCTS and the judiciary. Frontloading early legal advice for asylum claims – as is done in Switzerland – has reduced delays and the number of successful appeals.²¹

Claim Notices

22. The Bill announces that there will be new 'Claim Notices', for those liable to deportation or removal, where any reason/ grounds for remaining in the UK will need to be given in a time period to be set by the Home Secretary (clause 11). There is to be a 'late claims process' for those who respond to a 'claim notice' after the deadline, with the IIAA prioritises such

¹⁵ UNHCR, 'International standards and core procedural safeguards to be considered in the design of the new appeals body' (May 2026), p10

¹⁶ https://fln.dk/english/general_information_regarding_fln/

¹⁷ The Law Society, 'Immigration and asylum – legal aid deserts' (21 February 2024)

¹⁸ Dr Jo Wilding, 'Stemming the tide: the case for demarketising the legal aid sector' (ILPA), 6 November 2024

¹⁹ Ministry of Justice, 'Tribunal Statistics Quarterly: January to March 2026' (11 June 2026)

²⁰ Lizzie Dearden, 'Home Office says only half of UK asylum decisions meet its quality standards' (The Guardian, 8 December 2024)

²¹ Jonathan Thomas, 'Swiss Role Model?' (Social Market Foundation, March 2026)

appeals (clause 12). The Home Office have stated that such claims will be decided on within a week and then the IAA will be under a statutory requirement to prioritise such appeals.²²

23. Whilst there is limited detail, we are concerned that this will be a form of detained fast track appeal, which was previously found to be unlawful by the Court of Appeal on the basis that they were '*systemically unfair and unjust*' and that '*justice and fairness should not be sacrificed on the altar of speed and efficiency*'.²³ We would highlight that the Court of Appeal in that case did take into account that independent, impartial and specialist Tribunal judges would be hearing these cases, which would not be the case for the IAA (see above).

Article 8 ECHR Reform

24. Article 8 of the European Convention on Human Rights ('ECHR') protects the right to a private and family life. It is a qualified right; it can be interfered with by public authorities so long as that interference is lawful and proportionate. In the immigration context, the control of immigration and deporting those who are a risk to public safety are both legitimate reasons to interfere with Article 8.
25. The Government is, of course, entitled to seek to clarify domestic law around Article 8 immigration cases. However, the UK has obligations under the European Convention on Human Rights ('**ECHR**') and must act within the wide discretion set out by European Court of Human Rights' ('**ECtHR**') caselaw. We are concerned that the changes in the bill will weaken Article 8 protections and risks falling outside this discretion. It is not in the UK's interest to pursue a policy which risks being successfully challenged in the ECtHR because it will cause significant legal uncertainty in an already complex area.
26. It is important to stress that the Bill makes changes on Article 8 ECHR for all cases, not just those involving foreign nationals who have committed criminal offences. Article 8 cases often involve British-born children, who risk being permanently separated from a parent or being forced to leave the United Kingdom. Such cases can often be more complex than a media headline may appear on the surface and could involve, for example:
- (i) Single parents;
 - (ii) Victims of domestic violence;
 - (iii) Those with significant caring responsibilities for wider family;
 - (iv) Children being raised by other family members; and
 - (v) Children or adults with significant mental or physical health conditions; and

²² Immigration and Asylum Bill [ECHR memorandum](#), p4

²³ [The Lord Chancellor v Detention Action](#) [2015] EWCA Civ 840, para 49

(vi) Children or adults who have spent most of their life in the UK, unaware of their irregular status.

CONTEXT: There are over two times more lottery millionaires made each year than foreign national offenders who win human rights deport appeals on Article 8 ECHR.

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27. The following are the central changes to the Article 8 rules in the Bill:

a) Limiting the definition of the core family unit (clause 18)

The Bill states that family life under Article 8 should be normally limited to the 'core cohabiting family' – defined as a partner, child under the age of 18, or parent (for a child under 18) who live together. There are exceptions for 'genuine and subsisting' parent-child relationships and adults with an 'additional element of dependency (beyond normal emotional ties'. On the latter, this does not include situations such as financial dependency or illness unless one is very heavily reliant on that adult for constant care in this country or emotional support. The courts will have to determine the impact of this clause, and it may take significant litigation before it has settled.

b) Reducing the weight of family relationships when someone enters without leave or has precarious immigration status (clause 19).

The Bill states that '*no weight*' should be given to private or family life established by someone who entered the UK without leave, obtained it by deception or were in serious breach of a condition of that leave.

This potentially significantly impacts the rights of children. Children should have discretion to argue the impact of losing a parent, for example, irrespective of the actions of their parent. If someone's family life is established when their immigration status was precarious, then '*little weight*' should be given to it by the Home Office. This previously only applied to private life, not family life, so again could significantly affect the discretion to consider the impact on a child.

Immigration history is already a relevant consideration when balancing someone's Article 8 rights against the public interest in immigration control. However, there are a variety of reasons why someone may be in this situation. For example, they could have been in an exploitative relationship or poorly advised on their immigration status. This clause will significantly restrict the Home Office's discretion to consider the broad circumstances of someone's private or family life, required for an ECHR-compatible proportionality assessment.

c) Limiting the legislative definition of what is in a child's best interest (clause 19).

²⁴ 365 lottery millionaires were made in 2025. On the latest detailed Home Office data on human rights appeals, an [ad-hoc release in 2022](#), there were approximately 129 deport appeals allowed solely on Article 8 ECHR grounds per year.

The Bill reduces the scope of when it can be argued that a child should not have to leave the UK, due to their parent's lack of immigration status. This applies even in cases where the parents do not have criminal convictions. Previously, the public interest test meant the Home Office could refuse leave or pursue the deportation of a parent if it was 'reasonable' for the child to leave the UK to continue their parental relationship. The new test is much more prescriptive; it will be unreasonable for a child to be expected to leave the UK only if:

- (i) They would not receive **any** education in the new country;
- (ii) There would be 'very significant obstacles' to their ability to adapt or integrate; or
- (iii) The relocation would have a 'very significant and long-lasting adverse effect on the child'.

Similarly, for children who would remain in the UK, it would only be disproportionate to remove their parent if there will be a 'very significant and long-lasting adverse effect on the child'.

Whilst this will be likely subject to considerable (and complex) litigation, it tightens the circumstances in which children in the UK can argue their rights would be breached by either the removal of their parent, or them having to leave the UK. It is unclear how this is compatible with the Home Secretary's legal obligation to safeguard and promote the welfare of children.²⁵

d) Reduces the threshold at which an individual must meet the 'unduly harsh' test (clause 20).

Currently, there are separate legal tests for when a foreign national offender, relying on their Article 8 rights, can be deported. These are based on the length of sentence received. For those sentenced to at least 12 months, individuals must meet either the '*very significant obstacles to integration*' abroad test (for those who had been lawfully in the UK for most of their life) or the '*unduly harsh*' test (for those with partners or parents with children). For those with a sentence of at least four years imprisonment, there are required to be additional 'very compelling circumstances'.

Under the Bill, this distinction will be removed. For all liable for deportation, not now limited by the requirement that the criminal sentence is at least 12 months imprisonment, the individual will have to meet the '*very significant obstacles to integration*' test, the '*unduly harsh*' test or a new '*very compelling circumstances*' test. It is made clear that the more serious the offence, the greater the public interest in deportation.

28. The Article 8 changes set out above are likely to significantly impact the ability of children to argue that their rights will be breached by the forced separation from their parent or

²⁵ Section 55 of the Borders, Citizenship and Immigration Act 2009

having to leave the UK. The most stringent changes are not limited to those whose parents have committed a criminal offence.

30. The UK already has very strict Article 8 rules, especially for deportation cases with the 'unduly harsh' test under the Immigration Act 2014. Whilst making clear that ECHR signatories have the power (and considerable discretion) to deport foreign national offenders, the ECtHR has emphasised that states must consider the full range of circumstances around an individual's private or family life before making a deportation decision to ensure it is proportionate with the criminal offence committed.²⁶ In particular, the best interests and well-being of children must be properly considered.²⁷ In *Unuane v UK*, the ECtHR held that the 'unduly harsh' test was compatible with Article 8 on the basis that it permitted (even through the lens of exceptional or very compelling circumstances) the Home Office and courts to consider all relevant factors about someone's private or family life.²⁸
31. We are concerned that this legislation brings us closer to the wrong side of that threshold and urge Parliamentarians to scrutinise the Government's claim this is ECHR compatible.

Modern Slavery Provisions

32. The Bill makes a series of changes to how the UK will identify and support victims of human trafficking and modern slavery. We are particularly concerned about the following changes:

- a. **Credibility factors** (clause 36)

The Bill states that a competent authority must take it as damaging to a person's credibility if a person (or someone acting on their behalf) claiming to be a victim delays making a claim, delays in providing relevant information, provides inaccurate or inconsistent information, omits relevant information or provides '*strikingly similar*' to another person claiming to be a victim. Any information provided in relation to a 'claim notice' (where removal proceedings are being initiated) under the Bill is to be treated automatically as damaging (clause 36(5)). Whilst this will not apply if there are good reasons for the above, it is concerning that the starting point for decision-makers is to conclude that it is damaging (unless the claimant provides a good reason).

Home Office guidance, at present, makes clear that victims can have post-traumatic stress disorder and/or trauma which can result in disclosure which is '*often delayed*', that '*a delay in disclosing facts should not be viewed as manipulative or taken to mean these facts are untrue*', that memories from traumatic events are not recalled the same as ordinary memories and that traffickers may provide stories for victims to tell if approached by the

²⁶ *Boultif v Switzerland* 2001 App No. 54273/00.

²⁷ *Üner v The Netherlands*, 2006 App No. 46410/99

²⁸ *Unuane v UK* 2020 App No. 80343/17

authorities.²⁹ The Bill risks perpetuating some of these myths and regressing the Home Office's approach to modern slavery and human trafficking victims.

b. The removal of the duty to grant leave to remain to assist recovery (clause 39)

At present, the Home Secretary can grant limited leave to remain to victims of trafficking with a positive conclusive grounds decision if it will assist them with their recovery from any physical or psychological harm. Under the Council of Europe Convention on Action Against Trafficking in Human Beings ('ECAT'), which the UK has ratified, Article 14 provides that states should issue a '*renewable residence permit*' if their stay is '*necessary owing to their personal situation*'.³⁰

Helen Bamber Foundation research found that, in 2024, only 4% of trafficking victims (176 people) were granted limited leave to remain and nearly half of those were granted less than 12 months. Only five out of 599 confirmed child victims were granted limited leave.³¹ This provision will end that limited lifeline entirely; victims will only be able to get leave if it is required to seek compensation or to co-operate with an investigation or criminal proceedings.

33. These provisions are further troubling examples of the Home Office backsliding in its approach to the protection of modern slavery and human trafficking victims, following the Modern Slavery Act 2015.

Conclusion

34. JUSTICE are opposed to the abolition of the immigration Tribunal, which removes independent oversight of the Home Office and will exacerbate (not resolve) the asylum appeal backlog. We have also highlighted concerns around the Article 8 legal changes and troubling aspects of the modern slavery reforms. We urge Parliamentarians to make these points during the Second Reading debate.

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²⁹ Home Office, '[Modern Slavery: Statutory Guidance for England and Wales \(under section 49 of the Modern Slavery Act 2015\) and Non-Statutory Guidance for Scotland and Northern Ireland](#)' (11 May 2026)

³⁰ Council of Europe Convention Against Trafficking in Human Beings, clause 14

³¹ Helen Bamber Foundation, '[Thousands of confirmed trafficking victims denied permission to stay in the UK and left at risk](#)' (15 July 2025)

